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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/362,266	07/28/1999	JAMES K. WALLER JR.	1932.99C	6652

7590 07/30/2003

FRANK J CATALANO  
810 S CINCINNATI SUITE 405  
TULSA, OK 74119

EXAMINER

MEI, XU

ART UNIT	PAPER NUMBER
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2644

DATE MAILED: 07/30/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

921

# Office Action Summary

Application No.

09/362,266

Applicant(s)

Waller Jr. et al

Examiner

Xu Mei

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on May 16, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-5 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 and 5 is/are allowed.
- 6) ☒ Claim(s) 2 and 3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

Art Unit: 2644

**DETAILED ACTION**

1. This communication is responsive to the applicant's Appeal Brief dated 5/16/2003

2. Applicant's request for reconsideration of the finality of the rejection of the last Office action (Appeal Brief) is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Rejections - 35 U.S.C. § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 2-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Berkovitz.

Each of cited references above teaches an apparatus and method of processing at least one channel input signal comprising the steps of: receiving the input signal; modifying the input

Art Unit: 2644

signal to produce a second signal; variably controlling one of the input and second signals; and mixing the variably controlled signal and the not variably controlled signal to produce variably controllable third, fourth, and fifth channel output signal (Figs. 4-6 of Berkovitz).

5. Claims 4-5 are allowed over prior art of record.

***Response to Arguments***

6. Applicant's arguments filed in the Appeal Brief regarding claims 2-3 have been fully considered but they are not persuasive.

Claims 2-3 broadly claimed "means for mixing the variably controlled signal and the not variably controlled signal", and Figs. 4-6 of Berkovitz still met the claimed invention. Claims 2-3 ***do not called for the input signal being directly connected to the mixer(s)*** for generating the 3 output signal as argued. And means for mixing the ***variably controlled signal and the not variably controlled signal*** is met by each of Figs. 4-6 of Berkovitz.

Art Unit: 2644

The arguments regarding other references as present in the previous final rejection are deemed persuasive and the rejections in regard to those references is withdrawn in this action.

7. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

(703) 872-9314 **(for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121  
Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Xu Mei whose telephone number is 703-308-6610. The examiner can normally be reached on Monday-Friday (9:30-6:00), alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W Isen can be reached on 703-305-4386.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is 703-306-0377.

  
**XU MEI**  
**PRIMARY EXAMINER**